



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XC259]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to U.S. Navy Construction at Portsmouth Naval Shipyard, Kittery, Maine

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application for Letter of Authorization; request for comments and information.

SUMMARY: NMFS has received a request from the U.S. Navy (Navy) for authorization to take small numbers of marine mammals incidental to construction activities associated with the multifunctional expansion and modification of Dry Dock 1 at Portsmouth Naval Shipyard in Kittery, Maine over the course of 5 years from the date of issuance. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of the Navy's request for the development and implementation of regulations governing the incidental taking of marine mammals. NMFS invites the public to provide information, suggestions, and comments on the Navy's application and request.

DATES: Comments and information must be received no later than [*INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER*].

ADDRESSES: Comments on the applications should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to ITP.renytysonmoore@noaa.gov.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period.

Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at

<https://www.fisheries.noaa.gov/node/23111> without change. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Reny Tyson Moore, Office of Protected Resources, NMFS, (301) 427-8401. An electronic copy of the Navy's application may be obtained online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities>. In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An incidental take authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable

adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined “negligible impact” in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term “take” means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as: any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary of Request

On May 9, 2022, NMFS received an application from the Navy requesting authorization for take of marine mammals incidental to construction activities related to the multifunctional expansion and modification of Dry Dock 1 at Portsmouth Naval Shipyard in Kittery, Maine. We provided comments on the application and the Navy submitted revised versions and responses to our comments on July 5, 2022, August 15, 2022, August 19, 2022, and August 25, 2022. We determined the application was adequate and complete on August 25, 2022. The requested regulations would be valid for 5 years, from April 1, 2023 through March 21, 2028. The Navy plans to conduct necessary work, including impact and vibratory pile driving, hydraulic rock hammering, rotary drilling, and mono and cluster down-the-hole drilling (DTH), to expand and

modify Dry Dock 1. The proposed action may incidentally expose marine mammals occurring in the vicinity to elevated levels of underwater sound, thereby resulting in incidental take, by Level A and Level B harassment. Therefore, the Navy requests authorization to incidentally take marine mammals.

Specified Activities

Multifunctional Expansion of Dry Dock 1 (P-381) is one of three projects that support the overall expansion and modification of Dry Dock 1, located in the western extent of the Shipyard. The previous two projects, construction of a super flood basin (P-310) and extension of portal crane rail and utilities (P-1074) are currently under construction. In-water work associated with these projects was completed under separate IHAs issued by NMFS. The projects have been phased to support Navy mission schedules. P-381 will be constructed within the same footprint of the super flood basin over an approximated 7-year period, of which 5-years of in-water work would occur. An IHA was issued by NMFS for the first year of P-381 construction activities between April 1, 2022 and March 31, 2023 (87 FR 19866, April 6, 2022). This Letters or Authorization (LOA) request is for the remaining 4 years of P-381 in-water construction activities occurring from April 1, 2023 through March 31, 2028 as well as for additional in-water construction activities associated with the removal of emergency repair components of the super flood basin that will occur during the LOA period. Although the in-water construction described in this LOA application is anticipated to be completed by December 2026, the LOA application includes the full 5-year term through March 31, 2028 in the event of unanticipated schedule delays. Construction activities will include the excavation and/or installation of 1,118 holes, 180 shafts, and 520 sheet piles via impact and vibratory pile driving, hydraulic rock hammering, rotary drilling, and mono and cluster DTH. The construction activities are expected to require approximately 2,037 days over the 5-year period; however, overlapping activities are estimated to reduce the

number of construction days to within 4 years. Harbor porpoises (*Phocoena phocoena*), harbor seals (*Phoca vitulina vitulina*), gray seals (*Halichoerus grypus*), hooded seals (*Cystophora cristata*), and harp seals (*Pagophilus groenlandicus*) have been observed in the proposed action area.

Information Solicited

Interested persons may submit information, suggestions, and comments concerning the Navy's request (see **ADDRESSES**). NMFS will consider all information, suggestions, and comments related to the request during the development of proposed regulations governing the incidental taking of marine mammals by the Navy, if appropriate.

Dated: August 29, 2022.

Kimberly Damon-Randall,

Director, Office of Protected Resources,

National Marine Fisheries Service.

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